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8 UNITED STATES DISTRICT COURT  
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10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

12 JASON MUÑOZ and AMY MUÑOZ,

Case No. C-13-02374-RMW

13 Plaintiffs,

14 v.  
15 **ORDER GRANTING LEAVE TO FILE  
16 AMENDED COMPLAINT**

17 ELEVATOR SERVICE COMPANY OF  
18 CENTRAL CALIFORNIA, INC., et al.

19 Defendants.  
20 [Re Docket Nos. 23, 26]

21 Plaintiffs seek leave to amend his complaint to add a new defendant, Kone, Inc., and a new  
22 claim for products liability. Dkt. No. 23 (Motion); Dkt. No. 1 (Compl.) ; Dkt. No. 23-1 (First  
Amended Complaint (FAC)). For the reasons explained below, the court grants the motion for leave  
to amend.<sup>1</sup>

23 **I. Background**

24 Jason Munoz alleges that he was injured in an elevator accident that occurred on January 17,  
25 2013 at the Naval Postgraduate School in Monterey, CA. FAC at ¶ 17. Mr. Munoz and his wife  
26 originally filed a complaint against defendant Elevator Service Company (ESC) for “general

27 <sup>1</sup> Plaintiffs also filed an “Ex Parte Application to Request an Order Allowing Filing of a  
28 Supplemental Declaration” under Civil Local Rule 7-3(d). Dkt. No. 26. Because the supplemental  
declaration would not aid in deciding whether to grant leave to amend, the court denies the  
Application as moot.

negligence" and loss of consortium in state court. Dkt. No. 1. The complaint was removed to this court on the basis of federal question jurisdiction, because the Naval Postgraduate School is a federal enclave. FAC at ¶ 8.

ESC is allegedly the company responsible for servicing the elevator from 2009 to the date of the accident. FAC ¶ 15. Plaintiffs' original complaint only named ESC and Doe defendants. Kone is allegedly the company that installed the elevator in 2005 and serviced the elevator through 2008. Plaintiffs now seek to add Kone as a defendant and allege a products liability claim, against Kone only, on the basis that Kone installed a defective elevator. FAC ¶ 21. Plaintiffs appear to have two theories, one that Kone installed the wrong valve in the elevator's hydraulic system and one that Kone used the wrong type of hydraulic fluid or did not alert others as to the type of hydraulic fluid used. *Id.* at ¶¶21-23.

In addition to the products liability claim against Kone, the FAC also includes a negligence claim against ESC and Kone, and a loss of consortium claim by Ms. Munoz against both Kone and ESC. Mr. Munoz seeks \$5,000,000 in compensatory damages, and Ms. Munoz seeks \$1,000,000.

## II. Analysis

### A. Legal Standard

Under Federal Rule of Civil Procedure 15(a), a party may amend its pleading once as a matter of course within 21 days of serving it. Fed. R. Civ. Pro. 15(a)(1). After that initial period has passed, amendment is permitted only with the opposing party's written consent or leave of the court. Fed. R. Civ. Pro. 15(a)(2). Rule 15 instructs that "[t]he court should freely give leave when justice so requires." *Id.* Although this rule "should be interpreted with extreme liberality, leave to amend is not to be granted automatically." *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1387 (9th Cir.1990) (internal citation and quotation marks omitted). Courts commonly consider four factors when determining whether to grant leave to amend: (1) bad faith on the part of the movant; (2) undue delay; (3) prejudice to the opposing party; and (4) futility of the proposed amendment. *Lockheed Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980, 986 (9th Cir. 1999); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962). "[I]t is the consideration of prejudice to the opposing party that carries the greatest weight." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir.

1 2003) (citing *DCD Programs, Ltd v. Leighton*, 833 F.2d 183, 185 (9th Cir.1987)). “Absent  
 2 prejudice, or a strong showing of any of the remaining *Foman* factors, there exists a presumption  
 3 under Rule 15(a) in favor of granting leave to amend.” *Id.* (citation omitted). “The party opposing  
 4 leave to amend bears the burden of showing prejudice.” *Serpa v. SBC Telecomms., Inc.*, 318 F.  
 5 Supp. 2d 865, 870 (N.D. Cal. 2004) (citing *DCD Programs*, 833 F.2d at 187).

6 **B. Plaintiffs May File an Amended Complaint**

7 Plaintiffs seek leave to amend to add Kone and a new claim based on products liability. Dkt.  
 8 No. 23. Defendant ESC opposes because it would be unfairly prejudiced, discovery has closed, and  
 9 plaintiffs should have been on notice that Kone was a potential defendant at least in March 2014.<sup>2</sup>  
 10 Although defendant is correct that plaintiffs should have amended to add Kone as a defendant much  
 11 earlier in this case, ESC is not subject to unfair prejudice as a result of amendment.

12 ESC argues that the amendment will “radically shift the nature of the case.” Dkt. No. 24 at 6.  
 13 The court does not agree. The nature of the claims against ESC—general negligence—is the same.  
 14 It is unlikely that ESC will need to conduct further discovery, or that plaintiff will need to conduct  
 15 further discovery against ESC. Instead, because the new claim is only against the new party, most if  
 16 not all discovery will be directed to Kone. The prejudice to ESC is not great because it is unlikely  
 17 that ESC will be required to “re-do” its discovery.

18 Second, while the delay is apparent when looking at the entire discovery period, plaintiffs  
 19 amendment was made promptly after the depositions of ESC personnel and after plaintiffs had  
 20 clearer evidence to support a claim against Kone. Dkt. No. 24 (Opp’n) at 3. Defendant alleges that  
 21 plaintiffs did not diligently pursue discovery, but blame for the delay does not rest solely with  
 22 plaintiffs (although some of it does). It appears that part of the delay was related to rescheduling the  
 23 depositions of defendant’s employees. Dkt. No. 25-1, ¶¶ 12-13. In addition, it appears that both  
 24 parties had difficulty obtaining discovery from the Naval Postgraduate School and inspecting the  
 25 elevator. The delay in plaintiffs’ amendment is not “unexplained” and there is no evidence of a

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<sup>2</sup> Defendant’s argument that plaintiffs cannot seek leave to amend based on the Joint Case Management Statement is not persuasive. Dkt. No. 12. That deadline was not included in the court’s case management order. Dkt. No. 16.

1 dilatory motive. *See AmerisourceBergen Corp. v. Dialysist W., Inc.*, 465 F.3d 946, 953 (9th Cir.  
2 2006).

3 Finally, bringing Kone into this case is likely to result in more complete resolution of the  
4 issues to be decided. As Kone may ultimately be the party responsible to plaintiffs, ESC is not  
5 prejudiced by bringing a co-defendant into the case. Therefore, the court in its discretion grants  
6 leave to amend.

7 **III. Order**

8 For the reasons explained above, the court grants plaintiffs' motion for leave to amend, and  
9 enters the First Amended Complaint, Dkt. No. 23-1. Plaintiff must serve Kone within 30 days. A  
10 case management conference is set for January 9, 2015 at 10:30 am.

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12 Dated: October 31, 2014  
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Ronald M. Whyte  
United States District Judge